



Legislative Bulletin.....April 9, 2003

Contents:

H.R. 1036—Protection of Lawful Commerce in Arms Act

H.R. ___—Armed Forces Tax Fairness Act

H.Con.Res. 141—Expressing the sense of the Congress that the Internal Revenue Code of 1986 should be fundamentally reformed to be fairer, simpler, and less costly and to encourage economic growth, individual liberty, and investment in American jobs

H.Res. 165—Expressing support for a renewed effort to find a peaceful, just, and lasting settlement to the Cyprus problem

H.R. 1036—Protection of Lawful Commerce in Arms Act (Stearns)

Order of Business: The bill, which has 250 co-sponsors, is scheduled to be considered on Wednesday, April 9th, subject to a structured rule (H.Res. 181) with five amendments made in order (summarized below). Each amendment will be debatable for 20 minutes.

Summary: H.R. 1036 would prohibit civil liability actions from being brought or continued in any state or federal court against manufacturers, distributors, dealers, or importers of firearms or ammunition (or their trade associations) for damages resulting from the criminal or otherwise unlawful misuse of their products.

This bill would explicitly **NOT** prohibit (thus would still allow):

- an action brought by a harmed person against someone who intentionally transferred a firearm knowing that it would be used in a violent or drug-trafficking crime;
- an action brought against a seller for negligence or negligent entrustment (the selling of a firearm when the seller knows or should know that the buyer is likely to [and does] use the product in a manner involving unreasonable risk of physical injury to himself and others);
- an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a state or federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought;
- an action for breach of contract or warranty in connection with the purchase of the product; or
- an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended.

As written in the bill, the purpose of H.R. 1036 is to:

- “prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products for the harm caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended;
- “preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting;
- “guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment;
- “prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce; and
- “protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.”

Additional Background: The bill contains several findings, two of which are:

1. The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.
2. The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the Framers of the Constitution, by the Congress, or by the legislatures of the several states. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

According to information contained in the Judiciary Committee's Report #108-59, the following are among the municipalities that have filed suit against the firearms industry in attempt to win damages for firearms misuse: Atlanta; Boston; Bridgeport; City of Camden; County of Camden; Chicago; Cincinnati; Cleveland; Detroit; Wayne County, Michigan; Gary, Indiana; City of Los Angeles; County of Los Angeles; Miami-Dade County; Newark; New Orleans; Philadelphia; San Francisco; St. Louis; and Wilmington.

Tobacco companies spend about \$600 million a year defending against lawsuits brought by states with similar motives. Since the gun industry grosses \$1.5 billion a year, it is unlikely that gun companies would be able to finance a similar defense.

According to the National Rifle Association (NRA), 31 states have enacted legislation similar to H.R. 1036. See Committee Report #108-59 for a list of court cases that have ruled that firearms companies are not liable for the misuse of their products.

Amendments Made in Order Under the Rule:

Rep. Melvin Watt (D-NC): Modifies one of the allowable legal actions in the bill from:

“an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended,”
(emphasis added)

to:

“an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product.”

Rep. Robert Scott (D-VA): Allows a transferor of a firearm (knowing that such a firearm will be used to commit a crime of violence) to be sued before either the transferor or the transferee is convicted of a crime. That is, this amendment widens one of the legal actions NOT prohibited by the bill.

Rep. Linda Sanchez (D-CA): Adds a new legal action NOT prohibited by the bill: an action brought against a transferor convicted of selling or otherwise giving firearms or ammunition to an illegal-drug-user or someone committed to a mental institution (or otherwise adjudicated as a mental defective"). The drug-using or mentally defective person would have to be convicted for the conduct directly harming the plaintiff.

Rep. Martin Meehan (D-MA): Modifies one of the allowable legal actions in the bill from:

“an action brought against a seller for negligent entrustment or negligence per se,”

to:

“an action brought against a manufacturer, seller, or trade association for negligence.”

Correspondingly strikes the definition of “negligent entrustment” in the bill (Section 4(5)(B)).

Rep. Melvin Watt (D-NC): Limits the bill’s prohibition to suits against gun manufacturers for relief due to an injury resulting from the criminal act of another.

- Removes actions against trade associations or sellers of firearm products from the prohibited legal actions in the bill. (In other words, lawsuits against trade associations and sellers would be allowed.) Correspondingly strikes the definitions of “seller” and “trade association.”
- Removes two legal actions currently allowed in the bill, thus leaving the bill silent on them: an action brought against a transferor convicted for such transfer, and an action brought against a seller for negligent entrustment or negligence per se. Correspondingly strikes the definition of “negligent entrustment.”

- Limits an allowable legal action to manufacturers (not sellers) who violate laws regarding the design or manufacture (not sale or marketing) of firearms products.
- In the “Findings” section, strikes the reference to lawsuits commenced against “distributors, dealers, and importers” of firearms.
- In the “Findings” section, strikes the reference to the “importation, possession, sale, and use” of firearms as heavily regulated in the United States.
- In the “Findings” section, strikes the point that those who market, distribute, import, or sell firearms to the public should not be liable for the criminal actions involving guns.
- In the “Findings” section, strikes the reference to harm done to “an entire industry” and replaces it with harm done to “firearm and ammunition manufacturers.”
- In the “Purposes” section, strikes as a purpose of this legislation the prohibition of civil actions against “distributors, dealers, and importers” of firearms or ammunition.
- In the “Purposes” section, strikes as a purpose of this legislation the protection of the First Amendment rights of “distributors, dealers, and importers of firearms or ammunition products, and trade associations.”
- Strikes as part of the definition of “engaged in the business” the bill’s slight expansion to regular “sellers” of firearm products (current law refers to “dealers”).

NOTE: The NRA is opposed to all five amendments.

Committee Action: On April 3, 2003, the Judiciary Committee marked up and favorably reported an amended version of H.R. 1036 (as summarized above).

Cost to Taxpayers: CBO confirms that this legislation would have no significant impact on the federal budget and would not affect mandatory spending or revenues.

Does the Bill Create New Federal Programs or Rules?: The bill would prohibit certain civil liability actions, as detailed above.

Constitutional Authority: The House Judiciary Committee, in Report 108-59, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to “regulate Commerce...among the several States”).

Outside Organizations: The NRA issued a statement strongly supporting H.R. 1036.

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H.R. ____—Armed Forces Tax Fairness Act (Thomas)

Order of Business: The bill is scheduled to be considered on Wednesday, April 9th, under a motion to suspend the rules and pass the bill. The House passed similar bills (H.R. 1307 and H.R. 878) last month.

NOTE: This bill is nearly identical to H.R. 1307, other than the **bolded** provisions below:

Summary: H.R. ____ would amend the Internal Revenue Code to:

- 1) Alter how capital gains taxes are computed for homes of Armed Services and Foreign Service members and their spouses (**Foreign Service not included in H.R. 1307**), if the members are serving on qualified extended duty at least 150 miles away from their principal residence. Currently, a homeowner is exempt from capital gains taxes (on up to \$250,000 of gain--\$500,000 for married couples) if he sells one home and he had lived in it for a total of two out of the last five years. The bill would essentially suspend the five-year timeline if the serviceman is away for a period in excess of 180 days. In other words, when the home is sold, the home still must have been the primary residence for a *total* of 2 years, but not necessarily in the past 5 consecutive years.
- 2) Provide complete tax-free treatment of death gratuity payments paid to survivors of members of the armed services, starting with deaths after September 10, 2001. (Currently, only half of the \$6,000 death gratuity payment is tax-free.)
- 3) Exempt from the personal income tax amounts received under the DOD Homeowners Assistance Program (regarding drops in home values due to military base realignments).
- 4) Expand combat-zone tax-filing rules to cover contingency operations.
- 5) Allow lineal descendants of veterans to be treated as members in veteran's organizations for tax-exempt-status purposes.
- 6) Treat service academy appointments as scholarships for purposes of qualified tuition programs and Coverdell Education Savings Accounts.
- 7) Clarify that dependent care assistance provided under a military dependent care assistance program is tax-free.
- 8) Establish a new above-the-line tax deduction (beginning with tax-year 2003) of up to \$1,500 for travel expenses incurred by National Guard and Reserve members while more than 100 miles from home on official business.
- 9) Extend Victims Tax Relief Act benefits to astronauts who die in the line of duty. **[provision not in H.R. 1307]**

The bill clarifies that Social Security would remain unaffected by any provision in this legislation.

Additional Background: This legislation incorporates similar provisions passed by the House as H.R. 5063 on July 9, 2002, by a vote of 413-0. The distance-from-home provision was 250 miles last year, while it is 150 miles this year.

Committee Action: The House Ways & Means Committee marked up H.R. 878 on February 27, 2003, and reported favorably an amended version. This amended version included other tax provisions that did not necessarily affect members of the armed forces. The resulting controversy forced House leadership to pull the amended bill from consideration on March 6th. H.R. 1307, which is essentially H.R. 878 without the other tax provisions added at markup, was passed on the floor on March 19th. The Senate made the changes in bold above. This new House bill incorporates the Senate changes.

Cost to Taxpayers: Based on revenue estimates done by the Joint Committee on Taxation for the provisions in this bill, H.R. ___ would save taxpayers **\$87.5 million** in FY2003 and **\$376.5 million** over the FY2003-FY2007 period.

Does the Bill Create New Federal Programs or Rules?: The bill would make clarifications and changes to the Internal Revenue Code, as detailed above.

Constitutional Authority: The Ways & Means Committee, in House Report 108-23 for the similar bill H.R. 878, cites constitutional authority in Article I, Section 8, Clause 1 (which grants Congress the “power to lay and collect taxes, duties, imposts and excises...”) and in the 16th Amendment (which grants Congress the “power to lay and collect taxes on incomes, from whatever source derived...”).

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H.Con.Res. 141—Expressing the sense of the Congress that the Internal Revenue Code of 1986 should be fundamentally reformed to be fairer, simpler, and less costly and to encourage economic growth, individual liberty, and investment in American jobs (Kingston)

Order of Business: The resolution is scheduled to be considered on Wednesday, April 9th, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 141 would resolve that Congress:

- “encourages and supports a national debate on fundamental reform of the Internal Revenue Code of 1986;
- “agrees with the most recent Economic Report of the President which identifies reducing complexity, improving economic incentives, and achieving fairness, as key objectives of fundamentally reforming such Code; and
- “as part of this national debate, will begin a series of hearings to examine the case for, and the possible options for, fundamental reform of such Code.”

The resolution also states that:

- “recent reports estimate that 1 in 4 Americans are out of compliance with the Code and that the Internal Revenue Service provides the wrong answer nearly half the time through its telephone information program;

- “in 2001 the Internal Revenue Service spent \$8,900,000,000 to administer the current system while American taxpayers spent an estimated \$135,000,000,000 and 3,000,000,000 hours, more than a full day for each return, to comply;
- “the Code imposes multiple layers of taxation and hides the true cost of taxes in the price of goods and service;
- “the Code penalizes investment, discourages the flow of capital into our domestic economy, drives businesses to consider moving investment and jobs to foreign locations, and disadvantages domestically produced goods and services in international markets;
- “the Code disincentivizes work, savings, and investment by individuals and families;
- **“the Department of the Treasury estimates that approximately \$70,000,000,000 in taxable income remains untaxed in off-shore accounts;** and
- “on April 13, 2000, the House of Representatives passed, by a vote of 229 yeas and 187 nays, House Resolution 4199, calling for replacement of the Internal Revenue Code not later than December 31, 2004.

Committee Action: The bill was referred to the Ways & Means Committee on April 8, 2003, but was not considered by the committee.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

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H.Res. 165—Expressing support for a renewed effort to find a peaceful, just, and lasting settlement to the Cyprus problem (Bereuter)

Order of Business: The resolution is scheduled to be considered on Wednesday, April 9th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 165 would resolve that the House:

- “expresses its appreciation for the efforts of the United Nations Secretary General to seek a peaceful, just, and lasting settlement of the Cyprus problem for the benefit of the people of Cyprus and the region;
- “expresses its strong disappointment that the Secretary General's efforts to bring his plan for a comprehensive settlement to a referenda by the people of Cyprus has been rejected;
- “expresses its very strong regret that Turkish Cypriot leader, Mr. Denktash, rejected the comprehensive settlement offered by the Secretary General and denied the Turkish Cypriot people the opportunity to determine their own future by refusing to offer the settlement proposal to referenda;
- “remains committed, despite the recent setback, to giving any assistance necessary for finding a just and durable settlement for the Cyprus problem and urges the maximum

effort by the United States Government and others to redouble their efforts to seek a just and lasting settlement to the Cyprus problem;

- “encourages both Greek and Turkish Cypriot leaders to renew their efforts to find a settlement to the Cyprus problem on the basis of the Secretary General's framework for a comprehensive settlement;
- “urges the Governments of Turkey and Greece to do everything possible to support the search for a settlement, including actions by the Government of Turkey helping to persuade the Turkish Cypriot leader to reach an agreement which would reunite the island and which would serve the interests of both Cypriot communities; and
- “encourages both sides, upon completion of a comprehensive settlement, to consider putting such an agreement to referenda, if necessary, in order that the will of the people of Cyprus can be democratically expressed.”

Additional Background: In 1960, Cyprus gained its independence from Britain. In 1974, Greece launched a coup against Cyprus’ president. In response, Turkey invaded to restore constitutional order. Since then, Greece and Turkey have been at odds over the island nation, which is made up primarily of Greek Cypriots.

Committee Action: On April 3, 2003, the Subcommittee on Europe (of the House International Relations Committee) marked up the resolution and forwarded it to full committee by voice vote. The full committee did not consider the resolution.

Cost to Taxpayers: The resolution would authorize no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

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